

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
ARMED SERVICES
BUDGET
ENERGY AND
NATURAL RESOURCES
INTELLIGENCE
RULES AND ADMINISTRATION

April 12, 2016

The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Administrator Shelanski:

I write today regarding the Department of Labor's Proposed Rule *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees* (RIN 1235-AA11), currently under review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) expressly instructs the Department of Labor (DOL) to periodically define and delimit the pay threshold at which an individual is considered salaried, and thus exempt from the FLSA's requirement to be paid overtime. I believe it is important that the agency carry out this charge. I feel strongly that the current salary threshold of \$455 per week (approximately \$23,660 per year) is in need of an update, and I support the Administration's goals of ensuring that hardworking Americans are fairly compensated and that our federal policies keep pace with changing earnings and economic conditions.

While I support the overall aim of increasing wages for Americans, I have serious concerns about the proposed overtime rule's impact in Maine – concerns that I urge you to consider as your office completes its required cost-benefit analysis of the rule, pursuant to Executive Order 12866. These concerns include:

1. Salary threshold: My most significant concern is that the proposed salary threshold runs the risk of being too much, too soon for many Maine employers, and may create unintended consequences that result in reduced hours and benefits for impacted employees. The DOL's draft overtime rule proposes an immediate increase in the overtime threshold to \$970 per week (around \$50,440 per year) – more than double the current level of \$455 per week. While the current threshold has been significantly eroded by inflation, I believe that the DOL should use caution in proposing a uniform standard that is tied to national median wages. I am not convinced that the proposed standard can be fairly implemented across the country, or even within a given state.

For example, while the Census Bureau's estimate of Maine's median household income in 2014 was \$48,804, there was considerable variation between counties within the state, with median household income ranging from \$37,110 in Piscataquis County to \$59,560 in Cumberland County. Given this variation – even within a relatively small state – I am concerned that the proposed salary threshold outlined by DOL may not be suitable for Maine or reflect the differences in wages and cost-of-living between rural and urban areas. For this reason, I ask OIRA to consider whether DOL could instead propose regional overtime standards to reflect the significant variations in earnings based on geographic and economic conditions.

In addition, I am concerned by the immediacy of the rule's impact, requiring employers to transition to the new standard in one single step. I believe a more prudent course of action would be to phase in the threshold over three years, as Congress has often done when enacting new federal minimum wage standards. A staggered implementation timeline would create less disruption for impacted parties and would ensure businesses are able to budget for the transition over multiple years.

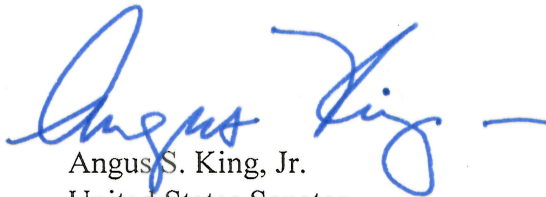
2. Automatic increase: The draft rule also proposes to automatically update the overtime threshold each year, either by indexing the threshold to the Consumer Price Index for All Urban Consumers (CPI-U) or to a fixed percentile of earnings. I have concerns about moving from the historical practice of periodically updating the overtime threshold, as the FLSA directs, to an automatic adjustment, without an accommodation for regional trends. In short, I do not believe that moving to an automatic increase is consistent with the FLSA's intent. I encourage OIRA to carefully weigh the costs and benefits of an automatic adjustment and, should such adjustment be desirable, consider the value of indexing the threshold to a fixed percentile of earnings rather than prices. Such an index would reflect wage growth and ensure that the percentage of workers covered by the rule remains roughly constant over time.
3. Implementation timeline: The DOL's proposed overtime rule outlined a six-month implementation timeline; that is, businesses would be expected to come into compliance with the rule six months after the publication of the final rule. With a change of this scale – a 113% increase to the overtime threshold – businesses in Maine and across the country will need time to examine the rule in order to understand their compliance obligations and to adjust their budgets accordingly. To facilitate the smoothest transition possible, I urge OIRA to ensure that the final rule's effective date provides for an adequate amount of time for businesses to transition and fully comply. OIRA might consider whether or not it is prudent to align the effective date with the fiscal year, or to provide at least one year to come into full compliance with the final rule.

As you know, I am not alone in raising these concerns. Indeed, the Small Business Administration's (SBA) Office of Advocacy articulated similar concerns to DOL Secretary Thomas Perez and Wage and Hour Division Administrator David Weil in a letter dated

September 4, 2015. In particular, the SBA Office of Advocacy raised concerns that the DOL had not completed a sufficiently thorough Initial Regulatory Flexibility Analysis (IRFA), as required by law, and requested that DOL complete a Supplemental IRFA in order to more fully examine the proposed rule's impact on small businesses. The Office of Advocacy also voiced specific concerns related to the DOL's analysis of the rule's impact on businesses in low-wage regions of the country, non-profit entities, and industries that operate with low profit margins. I share these concerns, and I urge OIRA to weigh these issues heavily as it conducts its analysis of the final rule.

I strongly believe that DOL can achieve the goal of improving the outdated overtime threshold without creating significant burdens on employers or unintended consequences for employees. I ask that your office conduct a fair and thorough review of the rule and ensure that the DOL has conducted a comprehensive analysis of the rule's impact on small businesses, as the SBA's Office of Advocacy has requested. I look forward to hearing from you and would be glad to discuss this issue further. Should you have any questions, please have your staff reach out to Aisha Woodward in my office at 202-224-5344.

Sincerely,



Angus S. King, Jr.
United States Senator

cc: The Honorable Thomas Perez, Secretary, U.S. Department of Labor
The Honorable Shaun Donovan, Director, Office of Management and Budget